



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

HD:hd
Docket No: 06294-02
13 January 2003

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: LT [REDACTED] USN, [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 3 Jul 02 w/attachments
(2) PERS-00H memo dtd 26 Aug 02
(3) PERS-311 memo dtd 13 Nov 02
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the fitness report for 1 February to 22 April 2002, a copy of which is at Tab A.
2. The Board, consisting of Messrs. Cooper, Frankfurt and Pfeiffer, reviewed Petitioner's allegations of error and injustice on 9 January 2003, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.
3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:
 - a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.
 - b. Petitioner contends the adverse fitness report at issue was submitted by the reporting senior as a punitive action for an alleged intentional violation of squadron operating procedures (SOP) involved during a flight mishap; that the reporting senior's allegation is in direct contradiction to official findings of investigations of the mishap by the Judge Advocate General and a Field Naval Evaluation Board; and that the punitive use of the fitness report violated the Bureau of Naval Personnel instruction restricting use of adverse reports as a substitute for appropriate corrective actions or as a means to contradict official investigative findings.

c. In correspondence attached as enclosure (2), the Navy Personnel Command (NPC) office having cognizance over Navy equal opportunity matters stated that they did not find any allegation or evidence of unlawful discrimination based on race, ethnicity, national origin, sex, or religion as described in the Navy Equal Opportunity Manual. They provided no recommendation for the disposition of this case.

d. In correspondence attached as enclosure (3), the NPC office having cognizance over fitness report matters has commented to the effect that Petitioner's request has merit and warrants favorable action.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (3), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing therefrom the following fitness report and related material:

Date of Report	Reporting Senior	Period From	of	Report To
02May30	CDR ██████████ USN	02Feb01		02Apr22

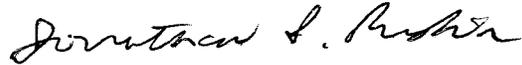
b. That there be inserted in Petitioner's naval record a memorandum in place of the removed report containing appropriate identifying data concerning the report; that the memorandum state that the report has been removed by order of the Secretary of the Navy in accordance with the provisions of federal law and may not be made available to selection boards and other reviewing authorities; and that such boards may not conjecture or draw any inference as to the nature of the report.

c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1610
PERS-00H/347
26 Aug 02

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS

Via: Assistant for BCNR Matters, PERS-00ZCB

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF
LE [REDACTED] USN [REDACTED]

Ref: (a) PERS-00ZCB MEMO 5420 OF 21 Aug 02
(b) OPNAVINST 5354.1E (Navy Equal Opportunity Manual)

Encl: (1) BCNR File 06294-02 with service record

1. Reference (a) requested an advisory opinion in response to Lieutenant [REDACTED] request to remove from his permanent record a fitness report for the period 02FEB01 to 02APR22.
2. Upon review of enclosure (1), I did not find any allegation or evidence of unlawful discrimination based on race, ethnicity, national origin, sex, or religion as described in reference (b).
3. I am providing no recommendation for the disposition of this case.

[REDACTED]

Director, Navy Equal
Opportunity Office
(PERS-00H)



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1610
PERS-311
13 November 2002

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: LT [REDACTED] USN

- Ref: (a) BUPERSINST 1610.10 EVAL Manual
- (b) Commander, Naval Air Systems Command ltr 5420 Ser AIR-00/ of 21 June 2002
- (c) Commander, Naval Air Warfare Center Aircraft Division ltr 5830 Ser 000000A/118 of 18 June 2002

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his fitness report for the period 1 February 2002 to 22 April 2002.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the report in question to be on file. It is signed by the member acknowledging the contents of the report and his right to submit a statement. The member indicated he did desire to submit a statement. PERS-311 has not received the member's statement and reporting senior's endorsement. Per reference (a), Annex S, paragraph S-8, the member has two years from the ending date of the report to submit a statement.

b. The report in question is a Detachment of Individual/Regular report.

c. Evaluating a subordinate officer's performance and making recommendations concerning promotion and assignment are the responsibilities of the reporting senior. These duties are accomplished in the fitness report. In reviewing petitions that question the exercise of the reporting senior evaluation responsibilities, we must determine if the reporting senior abused his/her discretionary authority. We must see if there is any rational basis to support the reporting senior's decision, and whether the reporting senior's actions were the results of improper motive. However, we must start from the position that the reporting senior exercised his/her discretion properly. Therefore, for us to recommend relief, the petitioner has to demonstrate that the reporting senior did not properly exercise his/her authority. The petitioner must show that either there is no rational support for the reporting senior's actions or that the reporting senior acted for an illegal or improper purpose. The petitioner must do more than just assert the improper

exercise of discretion; he must provide reasonable evidence to support the claim. I believe that Lieutenant [REDACTED] has done so.

d. Every member has the right to submit fitness or evaluations report input, and has the duty to do so if requested by the reporting senior. In whatever manner the report is developed, it represents the judgment of the reporting senior.

3. While we are always reluctant to recommend removal of a fitness report and in view of references (a) and (b), we believe that justice may be served by removing the fitness report in question.



Performance
Evaluation Branch